

**TINSLEY BRIDGE GROUP OF COMPANIES**  
**TERMS AND CONDITIONS OF SALE AND SUPPLY**

**1. INTERPRETATION**

**1.1 Definitions**

In these conditions, the following definitions apply:

**"Business Day"**: a day (other than a Saturday, Sunday or public holiday) in England, when banks in London are open for business;

**"Conditions"**: the terms and conditions set out in this document, as amended from time to time in accordance with Condition 12.6;

**"Contract"**: the Contract between the Supplier and the Customer for the sale and purchase of the Goods and/or supply of Services in accordance with these Conditions;

**"Customer"**: the person or firm who purchases the Goods and/or Services from the Supplier;

**"Delivery"**: shall have the meaning in Condition 3;

**"Force Majeure Event"**: has the meaning given in Condition 11;

**"Goods"**: the goods or any part of them set out in the Order;

**"Incoterms 2010"**: means the 2010 edition of Incoterms as issued by the International Chamber of Commerce for the use of domestic and international trade terms;

**"Intellectual Property Rights"**: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**"Order"**: the Customer's order for the Goods and/or Services, as specified in the Customer's written acceptance of the Supplier's quotation or the Customer's purchase order form, whichever is appropriate;

**"Sales Order Acknowledgement"**: the form issued by the Supplier on receipt of the Order or an equivalent form of electronic confirmation;

**"Specification"**: any specification for the Goods and/or Services, including any related plans and drawings that are supplied to the

Supplier by the Customer or produced by the Supplier and agreed in writing by the Customer;

**"Services"**: means the services (if any) specified in the Order to be delivered in connection with or without the supply of the Goods; and

**"Supplier"**: means **Tinsley Bridge Group Limited** (a company registered in England and Wales with company number 02122308) whose registered office is 335 Shepcote Lane, Sheffield, S9 1TG, or such other company within the same group of companies as Tinsley Bridge Group Limited and which has issued the Sales Order Acknowledgement to the Customer and/or provides the Goods or Services.

## **1.2 Construction**

In these Conditions the following rules apply:

- a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b) a reference to a party includes its personal representatives, successors or assignees;
- c) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. It includes any subordinate legislation made under that statute or statutory provision as amended or re-enacted;
- d) any phrase introduced by the other terms including, include, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- e) a reference to writing or written includes faxes and emails;
- f) condition headings do not affect the interpretation of these Conditions;
- g) where Delivery is expressed to be subject to a specific Incoterm, the Incoterms 2010 shall apply but where they conflict with the Contract, the Contract shall prevail; and
- h) words in the singular include the plural and in the plural include the singular.

## **2. BASIS OF CONTRACT**

2.1 These Conditions apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealings.

2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The

Customer shall ensure that the terms of the Order and any relevant specifications are complete and accurate. The Supplier accepts no liability for any errors in the Order.

- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a Sales Order Acknowledgement, at which point the Contract shall come into existence.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or any other Contract between the Supplier and the Customer for the sale of Goods and/or Service and shall have no contractual force.
- 2.5 A quotation for the Goods and/or Services given by the Supplier shall not constitute an Offer. A quotation shall only be valid for a period of 30 days from the date of issue, provided that the Supplier has not previously withdrawn it or otherwise agreed a different time period in writing.
- 2.6 The Supplier shall have the right to make any changes to the Goods and/or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods and/or Services, and the Supplier shall notify the Customer in any such event.
- 2.7 To the extent that the Goods are to be manufactured in accordance with a Specification or instructions supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Specification. This Condition 2.7 shall survive termination of the Contract.

### **3. DELIVERY AND SERVICE PROVISION**

- 3.1 The Supplier shall ensure that:
  - a) Delivery of the Goods is accompanied by a delivery note which states, as may be appropriate, the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods where applicable) and special storage instructions (if any); and
  - b) where the Goods are packed or protected as specified in the Contract or Specification (or in the event of no such Specification the Goods are delivered without any or

sufficient packing or protection), the Supplier shall not be liable for any deterioration (including rusting) of the Goods during carriage.

- 3.2 Unless otherwise agreed in writing by the Supplier, Delivery of the Goods shall take place at the Supplier's premises on an FCA basis, in accordance with Incoterms 2010.
- 3.3 Delivery of the Goods shall be completed on the completion of loading of the Goods at the Supplier's premises or where Delivery is to the Customer's premises on the completion of unloading unless otherwise agreed in writing by the Supplier.
- 3.4 Any dates quoted for Delivery and/or the supply of Services are approximate only, time is not of the essence and the Supplier shall not be liable for any liquidated damages proposed by the Customer. The Supplier shall not be liable for any delay in Delivery of the Goods and/or performance of Services that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and/or Services.
- 3.5 If the Customer fails to take Delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready for collection, then, except for such failure or delays caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
  - a) delivery of the Goods by the Customer shall be deemed to have taken occurred by 9am on the 3rd Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - b) the Supplier shall store the Goods until Delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 3.6 If 10 Business Days after the Supplier notified the Customer that the Goods were ready for Delivery the Customer has not taken Delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 3.7 The Supplier may deliver the Goods by instalments which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in Delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 3.8 The Customer acknowledges and agrees that:
  - a) the content of the Services and the purposes for which it wishes the Services to be carried out are specifically as described in the Specification and that the Supplier shall incur no liability or obligation to the Customer arising out of any other use or application thereof by the Customer;

- b) all information and data supplied or to be supplied to the Supplier by or on behalf of the Customer in connection with the Services is accurate and complete;
- c) where the Services or any part of them are carried out at the Customer's premises ("**Site**") that the Customer is aware of its duties under any relevant legislation or laws, including those relating to the state of the its Site and including without limitation the health and safety laws and any associated guidance or codes of practice in respect thereto and that the Services do not consist of giving any legal advice in relation to such legislation or laws. It shall be for the Customer to fully acquaint itself with all relevant legislation and laws;
- d) the Customer shall:
  - (i) be responsible for and shall take all necessary precautions to secure the safety of all personnel of the Supplier, its agents, representatives or subcontractors who have occasion in connection with the provision of the Services to visit the Site;
  - (ii) keep and maintain all Supplier equipment and other property of the Supplier that is left at the Site in safe custody at its own risk, maintain Supplier's equipment and other materials in good condition until returned to the Supplier, and not dispose of or use the Supplier equipment or other materials other than in accordance with the Supplier's written instructions or authorisation;
  - (iii) obtain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
  - (iv) identify within the Specification any particular areas of the Site where provision of the Services may be restricted by the operation of the business of the Customer in the vicinity of the area or place in which the Services are to be provided;
  - (v) allow the Supplier free access to supplies of electricity, water, gas and any other services as may be required to carry out the Services. The Supplier shall not be liable for loss or damage caused by variations in pressure or quality or by the interruption, withdrawal or failure of such services; and
  - (vi) ensure that the Supplier and its representatives are afforded free and uninterrupted access to the Site during normal working hours in order to provide the Services.

3.9 The Customer shall indemnify and hold the Supplier harmless against:

- a) any liabilities, losses, damages, claims, costs and expenses that may result from any loss of or damage to any property (including that of the Supplier) or injury to or death of any person (including any employee or representative of the Supplier) that may arise out of any act or omission (whether negligent or not) of the Customer, its employees, agents or sub-contractors in connection with the provision of the Services; and
- b) any liability to any third party arising out of any use or application of or reliance placed upon the Services whether by the Customer or any third party;

#### 4. QUALITY

- 4.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects and warrants that the Services will be provided using all reasonable skill and care.
- 4.2 The Supplier warrants that on Delivery and for a period of 12 months from the date of Delivery ("**Warranty Period**") the Goods and shall:
  - a) conform in all material respects to their description and any applicable Specification;
  - b) be free from material defect in design, material and workmanship;
  - c) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - d) be fit for any purpose held out by the Supplier.
- 4.3 Subject to Condition 4.4, if:
  - a) the Customer gives notice in writing to the Supplier during the warranty period within 7 days of the date of Delivery (or if the defect would not be apparent upon a reasonable inspection, within 12 months of the date of Delivery) that some or all of the Goods and/or Services do not comply with the warranties set out in Conditions 4.1 and 4.2; and
  - b) the Supplier is given a reasonable opportunity of examining such Goods and/or reviewing the performance Services; and
  - c) the Customer if asked to do so by the Supplier returns such Goods to the Supplier's place of business at the Customer's cost.

the Supplier shall at its option, repair or replace the defective Goods and/or re-perform the Services or refund the price of the defective Goods and/or Services in full. The Supplier's sole obligation and liability in the event of breach of warranty and the Customer's sole remedy, as determined by the Supplier, will be such refund of the

amount paid for any defective Goods, or repair or replacement of defective Goods free of charge. Any such repair, replacement or refund will be made only upon return of the defective Goods to a location designated by the Supplier. The Supplier will pay the transportation costs for returning defective Goods only after the Supplier has inspected the defective Goods (which may be by the Customer returning a sample to the Supplier at the Supplier's request), approved of such return and provided the Customer with shipping instructions.

4.4 The Supplier shall not be liable for the failure of the Goods comply with the warranties set out in Condition 4.2 above if:

- a) the Customer makes any further use of such Goods after giving notice in accordance with Condition 4.2;
- b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or if there are none, good trade practice;
- c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- e) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions; or
- f) the Goods differ from their description or Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards, pursuant to Condition 2.6.

4.5 Except as provided in this Condition 4, the Supplier makes no warranty that the Goods will be of satisfactory quality or fit for any particular purpose and the Supplier shall have no liability to the Customer in respect of the failure of the Goods and/or Services failure to comply with the warranties set out in Conditions 4.1 and 4.2.

4.6 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law, excluded from the Contract.

4.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier or Services re-performed.

## **5. RISK AND TITLE**

5.1 Risk in the Goods shall pass to the Customer on completion of Delivery.

5.2 Title to the Goods shall not pass to the Customer until the earlier of:

- a) the Supplier receiving payment in full (in cash or cleared funds) for: i) the Goods; and (ii) any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due; and
- b) the Customer reselling the Goods, in which case title to the Goods shall pass to the Customer at the time specified in Condition 5.4.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

- a) hold the Goods on a fiduciary basis as the Supplier's bailee;
- b) store the Goods separately from other Goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- d) maintain the Goods in satisfactory condition and keep them insured, with a reputable insurer, on the Supplier's behalf against all risks to the satisfaction of the Supplier for their full price from the date of Delivery. On request, the Customer shall produce the policy of insurance to the Supplier;
- e) notify the Supplier immediately if it becomes subject to any events listed in Condition 9.1; and
- f) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

5.4 Subject to Condition 5.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- a) it does so as principal and not as the Supplier's agent; and
- b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

5.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Condition 9.1 d) to k) or the Supplier reasonably believes any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold or irrevocably incorporated into another product and without limiting any other right or remedy the Supplier may have:

- a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

- b) the Supplier may at any time require the Customer to deliver up the Goods and if the Customer fails to do so promptly he may enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 5.6 On termination of the Contract, howsoever caused, the Supplier's (but not the Customer's rights) contained in this Condition 5 shall remain in effect.

## **6. PRICE AND PAYMENT**

- 6.1 The price of the Goods and/or Services shall be the price set out in the Sales Order Acknowledgement, or, if no price is quoted, the price set out in the agreed price list.
- 6.2 Quotations in a currency other than sterling are based on the exchange rate at the time, and may be subject to upward revision if any different exchange rate is in place on the date that the Sales Order Acknowledgement is despatched.
- 6.3 Quotations made and orders accepted are subject to the availability of raw materials and subject to normal manufacturing tolerances.
- 6.4 The Supplier may by giving notice to the Customer at any time before Delivery, increase the price of the Goods and/or Services to reflect any increase in the cost of the Goods and/or Services that is due to:
- a) any factor beyond the Supplier's control (including increases in tariffs, taxes and duties, and increases in labour, raw material, utility and other manufacturing costs);
  - b) any request by the Customer to change the Delivery dates, quantities or types of Goods ordered or the Specification; or
  - c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 6.5 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods which shall be paid by the Customer when it pays for the Goods.
- 6.6 The price of the Goods and/or Services is exclusive of amounts in respect of Value Added Tax ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall on receipt of a valid VAT invoice from the Supplier pay to the Supplier such additional amount in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

- 6.7 The Supplier may invoice the Customer for the Goods and/or Services on or at any time after the completion of the Delivery or completion of the Services.
- 6.8 Any maritime insurance required to be affected by the Supplier shall, unless otherwise agreed in writing, be 10% over the invoice price and shall cover the period from the commencement of transit to the Delivery of the Goods, as provided and contained in the Institute of London underwriters (the Institute) Cargo Clause (F.P.A.), the Institute war clauses and the Institute Strikes Riots and Civil Commotion Clauses current at the time of shipment.
- 6.9 The Customer shall pay the invoice for the Goods and/or Services in full and in cleared funds within 30 days from the end of the calendar month in which the invoice is dated. Payment shall be made into the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 6.10 If the Customer fails to make any payment due to the Supplier under the Contract by the due date of payment, then without limiting the Supplier's remedies under Condition 9 (Termination), the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.11 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set off, abatement, discount, counter claim or otherwise against the Supplier in order to justify withholding payment of any such amounts in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amounts owing to it by the Customer against any amounts payable by the Supplier to the Customer.
- 6.12 All payments due under the Contract shall become due immediately on its termination despite any other provision.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services and production of the Goods (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 7.2 Subject to Condition 7.3, the Supplier grants to the Customer a fully paid-up, worldwide, non-exclusive, royalty-free perpetual licence of the Supplier's intellectual property rights solely for the purpose of receiving and using the Goods and Services pursuant to the Contract.

- 7.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 7.4 The Customer shall not sub-license, assign or otherwise transfer the rights granted by Condition 7.2.
- 7.5 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purposes of performing the Contract.

## **8. CONFIDENTIALITY**

- 8.1 A party (Receiving Party) shall keep in strict confidence and shall not disclose to any person any technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, affairs, customers, clients, suppliers, products or its services, except as permitted by Condition 8.2.
- 8.2 The Receiving Party shall restrict disclosure of such confidential information:
  - a) to such of its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purpose of discharging the Receiving Party's obligations under the Contract. Each party shall ensure that such employees, officers, representatives, advisers, agents or subcontractors to whom it discloses the other party's confidential information are subject to obligations of confidentiality corresponding to those which bind the Receiving Party and comply with this Condition 8; and
  - b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 8.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 8.4 This Condition 8 shall survive termination of the Contract.

## **9. TERMINATION**

- 9.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
  - a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in

default not less than 14 days after being notified in writing to make such payment;

- b) the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- c) the Customer repeatedly breaches any of the terms of the Contract in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- d) the Customer suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of sections 268 of the Insolvency Act 1986 or being a partnership has any partner to whom any of the foregoing apply;
- e) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangements with any of its creditors, other than (where the Customer is a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- f) (being a company, limited liability partnership or partnership) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- g) being an individual, the Customer is the subject of a bankruptcy petition, application or order;
- h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution or sequestration or other such process is levied or enforced on or sued against the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
- i) being a company, an application is made to Court or an order is made for the appointment of an administrator or a

notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

- j) being a company a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- k) a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;
- l) any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 9.2 d) to k) inclusive;
- m) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- n) the financial position of the Customer deteriorates to such an extent that in the opinion of the Supplier the capability of the Customer adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- o) being an individual, the Customer dies or by reason of illness or incapacity (whether mental or physical) is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.2 If the Customer becomes subject to any of the events listed in Condition 9.1 d) to l) or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier.

9.3 On termination of the Contract, the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.

9.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

9.5 Conditions which expressly or by implication are intended to survive termination of the Contract shall continue in full force and effect.

## 10. LIMITATION OF LIABILITY

- 10.1 Subject to Conditions 3 and 4, the following provisions set out the entire financial liability of the Supplier to the Customer under and in connection with the Contract.
- 10.2 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- a) death or personal injury caused by its negligence or the negligence of its employees, agents or sub-contractors; or
  - b) fraud or fraudulent misrepresentation ; or
  - c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or;
  - d) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 10.3 Subject to Condition 10.2 and without prejudice to Condition 4.3:
- a) the Supplier shall not be liable to the Customer whether in contract, tort (including negligence) or restitution, breach of statutory duty, misrepresentation or otherwise, arising under or in connection with the Contract, for any:
    - (i) loss of profits;
    - (ii) loss of sales or business;
    - (iii) loss of business opportunity, agreements or contracts;
    - (iv) loss of anticipated savings;
    - (v) loss of use or corruption of software, data or information;
    - (vi) loss of, damage to or depletion of goodwill; or
    - (vii) special, indirect or consequential loss.
  - b) the Supplier's total aggregate liability to the Customer in respect of all other losses costs, claims, damages, liabilities or expenses arising out of or in connection with these conditions and all Contracts created between the Supplier and the Customer whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including arising from a breach of, or a failure to perform or defect or delay in performance of, any of the Supplier's obligations under such Contract, in each case howsoever caused including if caused by the negligence of the Supplier, shall not exceed the price of the Goods or the

Services the subject of the relevant Contract exclusive of VAT.

10.4 The Supplier shall not be responsible to the extent that the relevant loss is caused by an act or omission or the negligence of the Customer, its employees, agents or contractors or to the extent caused by the breach by the Customer of any of its obligations under any Contract.

10.5 This Condition 10 shall survive termination of the Contract.

## **11. FORCE MAJEURE**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event, circumstance or cause beyond a party's reasonable control which by its nature could not have been foreseen or if it could have been foreseen, was unavoidable, including (but not limited to) strikes, lock outs or other industrial disputes (whether involving its own workforce or a third party), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotions, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, border controls or restrictions, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemic or similar events, natural disasters or extreme adverse weather conditions or default of suppliers or subcontractors.

## **12. GENERAL**

### **12.1 Assignment, sub-contracting and other dealings**

- a) The Supplier may at any time assign, transfer, charge, sub-contract or deal with in any other manner with all or any of its rights or obligations under the Contract.
- b) The Customer may not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

### **12.2 Notices**

- a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this Condition 12 and shall be delivered by hand, sent by pre-paid first class post, recorded delivery, commercial courier, fax or email.
- b) A notice or other communication shall be deemed to have been received if delivered by hand when left at the address

referred to in Condition 12.2 (a), if sent by prepaid first class post or recorded delivery at 9am on the second Business Day after posting, if delivered by commercial courier on the date and at the time a courier's delivery receipt is signed, or if sent by fax or email at the time of transmission, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Condition 12.2(b), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- c) The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.

### **12.3 Severance**

If any Court or competent authority finds that any provision of the Contract or part of any provision is invalid, illegal or unenforceable that provision or part provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed to be deleted. In the event of any modification to or deletion of a provision or part-provision under this Condition, the validity and enforceability of the other provisions of the Contract shall not be affected.

### **12.4 Waiver**

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent, preclude or restrict the further exercise of that or any other rights or remedies. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent, preclude or restrict the further exercise of that or any other right or remedy.

### **12.5 Third party rights**

Unless it expressly states otherwise, a person who is not a party to the Contract shall not have any rights under or in connection with it. The Contracts (Rights of Third Parties) Act 1999 is thereby excluded.

### **12.6 Variation**

Except as set out in these Conditions, any variation to the Contract including the introduction of any additional terms and conditions shall only be binding when agreed in writing and signed by the parties.

### **12.7 Entire agreement**

- a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous

agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- b) The Customer acknowledges that in entering into the Contract it has not relied on, and shall have no remedies in respect of any statement, promise or representation, assurance or warranty (whether made innocently or negligently) made or given by or on behalf of the Supplier which is not set out in the Contract. The Customer agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- c) Nothing in this Condition shall limit or exclude any liability for fraud.

## **12.8 No partnership or agency**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

## **12.9 Governing law and jurisdiction**

- a) The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law.
- b) Each party irrevocably agrees that the courts of England & Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- c) The parties each:
  - (i) agree that Condition 12.9 shall remain in full force and effect notwithstanding any future full or partial departure of the United Kingdom from the European Union ("**Brexit**");
  - (ii) irrevocably waive any objection which they have or may at any time have to the courts of England on the ground that they are an inconvenient or inappropriate forum to settle any dispute (including, without limitation, on the grounds of Brexit or a Brexit related issue or circumstance); and
  - (iii) agree that they shall not object to, contest or appeal in any jurisdiction the choice in the Contract of English governing law and/or the exclusive jurisdiction of the

English courts and/or the enforcement of any judgment made by the English courts thereunder (including, without limitation, on the grounds of Brexit or a Brexit related issue or circumstance).

12.10 For the avoidance of doubt, the United Nations Convention on the International sale of Goods shall not apply to the Contract.

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